

Phil Gramm
Texas

ORIGINAL

United States Senate

MEMORANDUM

S-S-01

*CSB
Z. White
1464*

RECEIVED

AUG - 2 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Federal Communications Commission
Congressional Liaison
1919 M Street, NW
Washington, D.C. 20554

98-2061

A constituent has sent the enclosed communication. A response which addresses his/her concerns would be appreciated.

Please send your response to the following address:

Office of Senator Phil Gramm
2323 Bryan Street, #2150
Dallas, Texas 75201

Attention: Michael FitzGerald
(214) 767-3025
(214) 767-8754 (fax)

EMAIL: michael_fitzgerald@gramm.senate.gov

MAY 9 2 34 PM '01

No. of Copies rec'd
List ABCDE

2



Creating Cable Competition with Northpoint Technology

111 Congress Avenue
Suite 2530
Austin, Texas 78701
Tel: (512) 478-3400
Fax: (512) 478-3872

May 1, 2001

Honorable Phil Gramm
United States Senate
370 Russell Senate Office Building
Washington, DC 20510

Dear Sen. Gramm:

I write to ask for your assistance in encouraging the Federal Communications Commission to act on our license applications, which have been pending for nearly 28 months. We actually first approached the FCC with our technology in 1994.

As you know, Texans developed Northpoint's innovative technology, and Texans are the prime movers behind this venture. We're proud to have developed a technology that can benefit consumers throughout the United States by providing immediate and substantial price and service competition to incumbent cable and DBS systems. We are particularly pleased to report that we have never sought government subsidies to launch our system. We need licenses, not loans.

Americans need more competition in the multi-channel video-programming distribution (MVPD) marketplace. A recent FCC report concluded that Americans have a choice of cable providers in only one percent of cable markets. And while Direct Broadcast Satellites have brought services to many who could not avail themselves of any cable service, the DBS carriers still do not offer a fully competitive product because they carry few, if any, local TV stations.

An analysis of the Texas market illustrates the local signal problem. There are a total of 130 television stations operating in the 19 local television markets that serve the State of Texas. DBS operators have elected to carry a total of only 16 stations in just four of these markets.

When Congress enacted the Satellite Home Viewer Improvement Act to authorize satellites to deliver local signals into local markets, Congress understood the tremendous difficulty satellites would face in carrying all of the nation's 1600 local television stations. Accordingly, Congress did two things to address this concern. First, it delayed implementation of must carry until January 1, 2002. Second, it directed the FCC to expedite consideration of alternative technologies that could more effectively carry local stations.

Specifically, Congress set a one year deadline for the FCC to "take all actions necessary to make a *determination* regarding licenses" for services that could deliver local signals

Sen. Gramm
May 1, 2001
Page Two

into markets not served by the satellite carriers. Congress reaffirmed and clarified this deadline in report language to the FY 2001 CJS appropriations.

We were dismayed that the FCC failed to meet this deadline. While the FCC concluded that Northpoint Technology's terrestrial wireless system would not cause interference to DBS, the FCC ignored the congressional directive to grant licenses and instead opened up an entirely new proceeding to seek comment on licensing options, including auctions.

This new proceeding is unwarranted, counter to congressional directives, and will serve no purpose other than to delay consumer access to new technology. As the MITRE report made clear, no other party has come forward with a terrestrial technology that can do what Northpoint has spent years developing and shepherding through the regulatory process, and thus an auction is not applicable. In this case, rather than hasten the rollout of new technology, an auction would have the perverse effect of delaying its deployment. Broadcasters and consumer and minority advocacy groups have all filed comments at the FCC backing this position.

Senator Gramm, we would be grateful for any assistance you can provide to encourage the FCC to finally make a decision on our license applications. Given the MITRE report's confirmation of the FCC's previous determination that it is feasible for Northpoint to share spectrum with satellites, we are confident the FCC has all the data necessary to make a final decision.

Thank you for your consideration of this matter.

Sincerely,



Katherine (Chula) Reynolds
Principal



Federal Communications Commission
Washington, D.C. 20554

June 13, 2001

In Reply Refer To:

2001F/JB

0101464

The Honorable Phil Gramm
United States Senator
2323 Bryan Street, Suite 2150
Dallas, Texas 75201

Dear Senator Gramm:

Thank you for your May 1, 2001, letter concerning Northpoint Technology, Ltd. (Northpoint), which, through its subsidiaries, Broadwave Albany, L.L.C., *et al.*, filed applications for licenses to deploy broadband and local television service.

I want to emphasize that the 12.2 – 12.7 GHz proceeding is one of the most complex allocation proceedings the Commission has ever encountered, and is also one of the most contentious. Three services could potentially occupy this spectrum in a complex sharing arrangement that involves direct-broadcast satellite service (DBS), non-geostationary (NGSO) satellites, and Northpoint and other terrestrial users (as part of a new terrestrial fixed Multichannel Video Distribution and Data Service ("MVDDS")). Because of these complexities, this proceeding has been especially difficult to resolve.

Northpoint first filed an application with the Commission for an experimental license in November of 1995. Northpoint sought and received from the Commission numerous modifications and extensions of its experimental authorization over the subsequent years. The Commission is continuing to work expeditiously to develop the record to allow us to act swiftly on the waivers and applications filed by Northpoint and other parties, set out the process and rules by which to license and deploy MVDDS, and meet the commitments that Congress has imposed on the agency. Most recently, we have taken steps to comply with Section 1012 of the "District of Columbia Appropriations Act, 2001," which requires the Commission to provide for independent testing to determine the interference potential of terrestrial service technology proposing to use the 12.2-12.7 GHz band. The independent tester, MITRE Corp., subsequently completed the required interference study and submitted its report to the Commission on April 18, 2001. Per the statute, the Commission sought comment on the report on April 23, 2001. The comment period closed on May 23, 2001, and Commission staff is now analyzing the record.

Traditionally, licensing in the terrestrial wireless services requires a rule making proceeding to allocate spectrum and establish service and licensing rules before applications are accepted for filing. On November 29, 2000, the Commission also noted that several entities, including Northpoint, had filed applications and waiver requests before the time that the Commission determined that a fixed service could operate without causing harmful interference to DBS in the 12.2 – 12.7 GHz band. The licensing

issues presented in this proceeding are new and novel because of the multi-use purposes that are raised by the allocation plan. In particular, we note that there are significant issues raised concerning the different licensing regimes between satellite and terrestrial operations, and our statutory requirements to auction terrestrial licenses. Consequently, the Commission sought comment on the appropriate disposition of the waiver requests and applications.

The Commission is committed to resolving all outstanding matters in this complex proceeding as expeditiously as practical. I also point out that we have pending petitions for reconsideration of our November 29, 2000, decision to allow for three-way sharing in the band, and at least one other party has applied for an experimental license to offer similar service to that proposed by Northpoint. However, we plan to release a *Memorandum Opinion and Order and Second Report and Order* and concomitant interference report no later than the fourth quarter of 2001. Depending on the nature of any petitions for reconsideration filed in response to the *Second Report and Order*, the Commission expects to commence the licensing process no later than the first quarter of 2002.

I appreciate your interest and concern in this important area.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kathleen O'Brien Ham', with a stylized flourish at the end.

Kathleen O'Brien Ham
Deputy Bureau Chief
Wireless Telecommunications Bureau

j:\congress2001\0101464 Gramm Northpoint

cc: PSPWD chron file
K Farmer (BPOC)
D Terry
R Melson
J Kowalski
H Zeiler
J Borkowski
P Daronco
S Stone
J Schauble
J Burton
J Gordon (DPOC)
M Shultz
S Linn
L Woods

For Envelope:

Attn: Michael Fitzgerald